

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Team # 5	CCRB Case #: 201301525	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 01/14/2013 6:00 PM	Location of Incident: § 87(2)(b)	Precinct: 122	18 Mo. SOL 7/14/2014	EO SOL 7/14/2014	
Date/Time CV Reported Mon, 02/11/2013 1:59 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/11/2013 1:59 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Steven Hennessy	08050	948526	122 PCT
2. POM Emmanuel Kwo	01403	944715	122 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Steven Hennessy	Abuse: Officer Steven Hennessy stopped § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
B.POM Emmanuel Kwo	Abuse: Officer Emmanuel Kwo stopped § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
C.POM Steven Hennessy	Abuse: Officer Steven Hennessy refused to provide his name and/or shield number to § 87(2)(b)	§ 87(2)(b)
D.POM Steven Hennessy	Abuse: Officer Steven Hennessy frisked § 87(2)(b)	§ 87(2)(b)
E.POM Steven Hennessy	Discourtesy: Officer Steven Hennessy spoke rudely to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
F.POM Emmanuel Kwo	Abuse: Officer Emmanuel Kwo frisked § 87(2)(b)	§ 87(2)(b)
G.POM Steven Hennessy	Force: Officer Steven Hennessy hit § 87(2)(b)'s head against a pole.	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On February 11, 2013, § 87(2)(b) and § 87(2)(b) filed the following complaint with the Internal Affairs Bureau (IAB) via phone, generating IAB log #2013-2394 (encl. D1-2). On March 11, 2013, this complaint was received by the Civilian Complaint Review Board (CCRB) (encl. D4-5).

On January 14, 2013, at approximately 6 p.m., § 87(2)(b) and § 87(2)(b) encountered Officer Steven Hennessy and Officer Emmanuel Kwo of the 122nd Precinct, in front of § 87(2)(b) in Staten Island. The following allegations resulted:

- **Allegation A-Abuse: Officer Steven Hennessy stopped** § 87(2)(b) and § 87(2)(b)
- **Allegation B-Abuse: Officer Emmanuel Kwo stopped** § 87(2)(b) and § 87(2)(b) § 87(2)(g)
- **Allegation C-Abuse: Officer Steven Hennessy did not provide his name and/or shield number to** § 87(2)(b) § 87(2)(g)
- **Allegation D-Abuse: Officer Steven Hennessy frisked** § 87(2)(b) § 87(2)(g)
- **Allegation E- Discourtesy: Officer Steven Hennessy spoke rudely to** § 87(2)(b) and § 87(2)(b) § 87(2)(g)
- **Allegation F-Abuse: Officer Emmanuel Kwo frisked** § 87(2)(b) § 87(2)(g)
- **Allegation G-Force: Officer Steven Hennessy hit** § 87(2)(b) **s head against a pole.** § 87(2)(g)
- § 87(4-b) § 87(2)(g)

Results of Investigation

Civilian Statements

- **Complainant/Victim:** § 87(2)(b)
§ 87(2)(b) *a.k.a.* § 87(2)(b) *is a white man who stands 6'2" tall and weighs 210 pounds. He has green eyes and orange hair.* § 87(2)(b)

Statements to Medical Personnel

§ 87(2)(b) was seen at § 87(2)(b) on § 87(2)(b) at § 87(2)(b). § 87(2)(b) stated that he was walking down an alley, the night before, when police approached him. He stated that he had an altercation with the police and they strangled him and hit his head against a metal post. He went home experiencing a headache and pain at the site of the impact. § 87(2)(b) complained of slight dizziness and minimal nausea. He described his pain as moderate and stated that his injuries occurred from being thrown down. During a physical exam, an abrasion to the left side of his neck was found. § 87(2)(b) told them that the mark was a hickey.

Statements to IAB

On February 11, 2013, § 87(2)(b) provided a telephone statement to IAB (encl. D3). This statement was consistent with his CCRB testimony, except where noted below.

CCRB Testimony

On March 15, 2013, § 87(2)(b) provided a phone statement to the CCRB (encl. D7-8). On March 26, 2013, § 87(2)(b) was interviewed at his home, located at § 87(2)(b) in Staten Island (encl. D9-10). Due to mechanical failure, § 87(2)(b)'s interview was not recorded and he contacted on October 30, 2013 to confirm officer identification (encl. D11). § 87(2)(g)

On January 14, 2013, at approximately 6 p.m., § 87(2)(b) was walking down an alley with his friend, § 87(2)(b). They had just encountered a friend, identified through the investigation as § 87(2)(b) when a marked patrol car approached them in front of § 87(2)(b) in Staten Island. Two uniformed officers got out of the car and approached them. One of the officers was a white or white Hispanic man between 5'4" and 6'2" tall in his late 20s-early 30s who was the passenger. § 87(2)(b) described the other officer, identified by the investigation as Officer Emmanuel Kwo, as a 5'4" tall black man in his late 20s to early 30s with a medium build of 150 pounds and a black beard who was the driver. [In his phone statement, § 87(2)(b) described Officer Kwo as a black man in his 30s, 5'7" tall with a thin build and black hair with a black scruffy beard. He described Officer Kwo's partner as a white man in his late 20s-early 30s, 5'9" tall with black hair and a medium build.]

§ 87(2)(b) identified a third officer, who arrived in one of the marked or unmarked vehicles that arrived on scene later, by name as Officer Hennessy and described him as a 5'5" tall white man in his late 20s-early 30s with blond hair, a heavy build, and a blond beard who looks like the actor Jonah Hill. The investigation determined that at this point of the incident there were only two officers who dealt with § 87(2)(b) and his friends and that the initial white officer described by § 87(2)(b) and Officer Hennessy are the same person.

Officer Hennessy told § 87(2)(b) and § 87(2)(b) to get against the fence. § 87(2)(b) asked Officer Hennessy what he did wrong and Officer Hennessy told him a second time to get against the fence. § 87(2)(b) asked to see Officer Hennessy's official identification. Officer Hennessy told him that he was not showing him anything and again told § 87(2)(b) to get against the fence. § 87(2)(b) complied and Officer Hennessy patted § 87(2)(b)'s pants pockets. § 87(2)(b) told Officer Hennessy that he was violating his constitutional rights. Officer Hennessy asked § 87(2)(b) if he was being a "smart ass" and handcuffed him. [In his statement to IAB and in his phone statement, § 87(2)(b) stated that he was in handcuffs for approximately 10-15 minutes.] [In his statement to IAB, § 87(2)(b) stated that he was searched while in handcuffs.]

Officer Hennessy then frisked § 87(2)(b) [In his phone statement, § 87(2)(b) did not allege that he or § 87(2)(b) were frisked or searched.]

Approximately ten police cars, both marked and unmarked, and 15 officers, both uniformed and plainclothes, arrived at the scene. [In his statement to IAB, § 87(2)(b) did not describe multiple officers and vehicles being on scene.] § 87(2)(b) was taken out of handcuffs. Officer Hennessy asked him if he had a brother named Frank. § 87(2)(b) replied that he did. Officer Hennessy said, "I'm going to get your brother to kick your ass." [In his statement to IAB, § 87(2)(b) alleged that another officer on scene made this statement.] § 87(2)(b) told Officer Hennessy that he did not know him. [In his statement to IAB, § 87(2)(b) alleged that Officer Hennessy said, "Say something again. I'll drop you."]

Officer Hennessy got in § 87(2)(b)'s face and grabbed his neck around his collar bone with both hands. [In his phone statement, § 87(2)(b) alleged that Officer Hennessy got in his face and said, "Call me son again and I'll fuck you up." He then put his hands on § 87(2)(b)'s neck for approximately five seconds.] [In his statement to IAB, § 87(2)(b) alleged that Officer Hennessy grabbed him by his throat.] § 87(2)(b)'s breathing was not restricted and he did not move or resist. Officer Hennessy put one hand on the back of § 87(2)(b)'s head and slammed his head into the pole that was on the fence, causing the left side of § 87(2)(b)'s head to make contact with the pole. A large number of officers came over to § 87(2)(b) and placed him back into handcuffs and into Officer Kwo's patrol car. [In his statement to IAB, § 87(2)(b) stated that Officer Hennessy and the other officer on scene placed him in handcuffs.]

§ 87(2)(b) was taken to the 122nd Precinct stationhouse and released with two summonses: § 87(2)(b). § 87(2)(b) sustained bumps, cuts, and bruising to the left side of his face and went to the hospital for medical attention § 87(2)(b). § 87(2)(b) was diagnosed with a concussion.

Other Evidence

Photographs of the incident location (encl. C5-C14) were taken by the undersigned investigator after § 87(2)(b)'s interview. The following is § 87(2)(b)'s account of what each photograph represents. Photographs one and two show the exit point of the alley that § 87(2)(b) and his friends walked through before being approached by the officers. Photograph three is a picture of the pole that § 87(2)(b)'s head was banged against. Photograph four is a picture of the fence that § 87(2)(b) and his friends were placed against upon being stopped. Photographs five, six, and seven are pictures of the alley from their entrance point. Photograph eight is a picture of the only sign on the alley's path. Photographs nine and ten are close ups of the rusted lock that is no longer operational on the door leading into the alley.

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a white woman who stands 5'2" tall and weighs 130 pounds. She has streaked brown and orange hair and brown eyes. At the time of the incident, she was § 87(2)(b) old. § 87(2)(b) is § 87(2)(b)'s mother.

Statement to IAB

On February 11, 2013, § 87(2)(b) provided a telephone statement to IAB (encl. D3). § 87(2)(b) only stated that she ran outside because she saw police cars and officers with § 87(2)(b) against the fence. She provided no further information.

CCRB Testimony

On March 15, 2013, § 87(2)(b) provided a phone statement to the CCRB (encl. D7-8). On March 26, 2013, § 87(2)(b) was interviewed at her home, located at § 87(2)(b) in Staten

Island, NY (encl. D15-16). § 87(2)(g)

On January 14, 2013, at approximately 6 p.m., while at home, § 87(2)(b)'s husband, § 87(2)(b) told her that police officers were outside and had her son, § 87(2)(b) up against the fence. § 87(2)(b) ran outside and § 87(2)(b) stayed home.

When § 87(2)(b) arrived at § 87(2)(b) she saw § 87(2)(b) and two other boys, identified through the investigation as § 87(2)(b) and § 87(2)(b) with their backs against the fence. § 87(2)(b) saw two officers in uniform, one identified by § 87(2)(b) as Officer Hennessy and described as a 5'6"-5'9" tall white man, 35-45 years old with a medium/stocky build and the other identified through the investigation as Officer Emmanuel Kwo and described as a man, taller than Officer Hennessy, in his 30s or 40s. She also saw two officers in plainclothes that she described as men in their 30s or 40s dressed in sweatshirts and jeans.

The officers were talking to § 87(2)(b) and § 87(2)(b) but they did not respond. § 87(2)(b) asked the officers what was going on and told them that § 87(2)(b) was her son. § 87(2)(b) was approximately six feet away from § 87(2)(b) when Officer Hennessy said, "Get the hell in the house," or, "Get the fuck in the house." [In her phone statement, § 87(2)(b) alleged that Officer Hennessy said, "Get in the fucking house before you get arrested." When she stated that she wanted to know what was happening with her son, he repeated, "Get in the fucking house." § 87(2)(b) asked why and asked if § 87(2)(b) had drugs on him. Officer Hennessy asked her if he should have drugs on him. § 87(2)(b) told Officer Hennessy that she was on pills, referring to her heart medicine, and did not feel well and just wanted to know what was going on with her son. Officer Hennessy responded, "What kind of pills are you on? You do pills?" Officer Hennessy repeatedly told § 87(2)(b) to get in the house. § 87(2)(b) walked back into her home, fearing that she would be arrested.

Ten minutes later, § 87(2)(b) returned outside and was halfway down the block when she saw two uniformed officers with their hands raised towards § 87(2)(b). It was dark outside so § 87(2)(b) could not tell if they hit him. [In her phone statement, § 87(2)(b) alleged that it was Officer Hennessy who raised his hand towards § 87(2)(b). By the time she got closer to the scene, § 87(2)(b) was already in the police car. § 87(2)(b) was approximately two feet away from the police car when Officer Hennessy told her to get away from the car and to get in the house. Officer Hennessy told her that § 87(2)(b) would be released soon and that they just wanted to talk to him and he was not getting arrested. § 87(2)(b) walked away with § 87(2)(b) and § 87(2)(b) who had been released.

Approximately two hours later, § 87(2)(b) came home with bruises and dried blood all over his face.

Victim: § 87(2)(b)

- § 87(2)(b) is a Hispanic man. At the time of the incident, he was § 87(2)(b) old. § 87(2)(b) is § 87(2)(b)'s friend. On March 15, 2013, § 87(2)(b) provided a phone statement to the CCRB (encl. D6).

CCRB Interview

On January 14, 2013, at approximately 6 p.m., § 87(2)(b) was walking home with two of his friends, § 87(2)(b) and an individual identified through the investigation as § 87(2)(b) when he noticed a marked police car come from § 87(2)(b). The three of them had cut through an alley on their way to § 87(2)(b)'s house. There are no "no trespassing" signs in or near the alley and there is a sidewalk going through the alley. There are houses on both sides of the alley but each house has its own fence separating it from the alley.

The police car turned the corner, heading in the opposite direction that § 87(2)(b) and his friends were walking, stopped, backed up and then sped up. Two uniformed officers, who he described only as white males, jumped out of the car and ran towards them. The officers told them to put their hands on the wall and started going through their pockets. None of them had anything on them. The officers were asking them about drugs and requested their identification, which they provided. More officers arrived. The officers slammed § 87(2)(b) against the fence and beat him up. § 87(2)(b) did not further specify what the officers did to § 87(2)(b).

The officers ran all of their names. § 87(2)(b) was arrested. § 87(2)(b) and § 87(2)(b) were not. All three of them were given summonses for § 87(2)(b). § 87(2)(b) did not see which officer wrote the summonses because they were written in the police car. An officer, identified through the investigation as Officer Emmanuel Kwo and described by § 87(2)(b) only as a black man, handed them the summonses. It was dark outside so § 87(2)(b) could not give better descriptions of the officers.

On March 15, 2013, § 87(2)(b) provided a phone statement. He stated that he would call back to schedule an interview. On March 18, 2013, § 87(2)(b) was contacted and an interview was scheduled for March 26, 2013. On March 26, 2013, § 87(2)(b) did not appear for his interview and did not call ahead of time to cancel or reschedule. A missed appointment letter was sent to § 87(2)(b) the same day. On March 28, 2013, a third attempt was made to contact § 87(2)(b) but his number was no longer in service. A missed appointment letter was emailed to § 87(2)(b) the same day. On April 1, 2013, a fourth attempt was made to contact § 87(2)(b) and an automated message stated that the call could not be completed as dialed. The same message was heard when the number was redialed. On April 9, 2013, a final attempt was made to schedule an interview with § 87(2)(b). He stated that he would call back to reschedule his interview. A final please call letter was mailed and emailed to § 87(2)(b) the same day. On September 25, 2013, a search of the New York City Department of Correction database was conducted, concluding that § 87(2)(b) is not incarcerated. As of the date of this report, § 87(2)(b) has not contacted the CCRB to reschedule his interview and none of the letters sent to him have been returned as undeliverable.

Attempts to Contact Civilians

On March 15, 2013, a 411 search was conducted for § 87(2)(b). It yielded negative results. [§ 87(2)(b)] [§ 86(1)(3)&(4)] [§ 87(2)(c)]

A please call letter was mailed to § 87(2)(b) the same day. On April 1, 2013, a search of Yellow Pages produced a phone number for § 87(2)(b)'s residence. An attempt was made to contact § 87(2)(b) that day and a message was left with his mother, § 87(2)(b) § 87(2)(b) who stated that he was not available and she would have him call back tomorrow. On April 9, 2013, a second attempt was made to contact § 87(2)(b). His mother answered the phone and stated that he was incarcerated at Riker's Island. A search of the New York City Department of Correction (NYC DOC) database confirmed that § 87(2)(b) was incarcerated at Riker's Island. His court date was scheduled for § 87(2)(b).

On April 11, 2013, a search of the NYC DOC showed that § 87(2)(b) was still incarcerated and his next court date was on § 87(2)(b). § 87(2)(g)

On May 10, 2013, a search of the NYC DOC and a search of New York State DOC were conducted, concluding that § 87(2)(b) was no longer incarcerated. On May 10, 2013, a third attempt was made to contact § 87(2)(b) and a voicemail message was left. A final please call letter was sent to § 87(2)(b) the same day. On May 14, 2013, a fourth attempt was made to contact § 87(2)(b) § 87(2)(b).

§ 87(2)(b)

On May 16, 2013, § 87(2)(b) was contacted and an interview was tentatively scheduled for May 29, 2013. § 87(2)(b) stated that she would contact the facility, arrange the interview and call back to confirm. On May 22, 2013, § 87(2)(b) was contacted. She stated that she was going to § 87(2)(b) tomorrow and would call by May 24, 2013 to confirm the interview. On May 29, 2013, § 87(2)(b) was contacted. She stated that she would call § 87(2)(b)'s counselor tonight and call back with an update. It was explained that she must call by May 31, 2013 with further information or the investigation may proceed without § 87(2)(b)'s testimony. A voicemail was left later that day asking for the name and phone number of § 87(2)(b)'s counselor. As of the date of this report, § 87(2)(b) has not contacted the CCRB to provide the name or number of § 87(2)(b)'s counselor or to schedule an interview.

NYPD Statements:

Subject Officer: OFFICER EMMANUEL KWO

- *Officer Emmanuel Kwo is a black man who stands 6'2" tall and weighs 200 pounds. He has black hair and brown eyes. At the time of the incident, he was § 87(2)(b) old.*
- *On January 14, 2013, Officer Kwo worked in uniform from 1 p.m. until 9 p.m. with Officer Hennessy. He was assigned to the conditions unit in unmarked vehicle #§ 87(2)(b)*

Memo Book (encl. E1-3)

At 5:55 p.m., three individuals were stopped at the corner of § 87(2)(b) for § 87(2)(b). At 6 p.m., § 87(2)(b), § 87(2)(b) and § 87(2)(b) were issued summonses for § 87(2)(b). At 6:22 p.m., a summons for § 87(2)(b) was issued to § 87(2)(b) at the stationhouse.

Summonses (encl. E4-7)

On January 14, 2013, Officer Kwo issued summons #§ 87(2)(b) to § 87(2)(b) summons #§ 87(2)(b) to § 87(2)(b) and summons #§ 87(2)(b) to § 87(2)(b) for § 87(2)(b) in front of § 87(2)(b). He noted on § 87(2)(b)'s and § 87(2)(b)'s summonses that at the time, place, and occurrence, they were observed in the yard of § 87(2)(b) which is a private residence. Officer Kwo also issued summons #§ 87(2)(b) to § 87(2)(b) for § 87(2)(b).

CCRB Testimony

On June 18, 2013, Officer Kwo was interviewed at the CCRB (encl. E8-10). Officer Kwo was interviewed a second time at the CCRB on August 2, 2013 (encl. E11-12).

On January 14, 2013, at approximately 5:55 p.m., Officer Kwo and Officer Hennessy received a request for an additional unit from the hurricane auto. The hurricane auto, which is a single post, had been in place in the Midland Beach area since Hurricane Sandy occurred. The job of the hurricane auto was to watch for looters—people breaking into unoccupied homes—and deal with other storm related issues. Officers assigned to the hurricane auto were not from his command. These officers came from different boroughs and were brought in for a couple of months. These officers worked alone and were not familiar with Staten Island. Officers from the 122nd Precinct were able to identify hurricane autos from the lights on their cars. Officer Kwo did not know where the officer from the hurricane auto that he interacted with on the date of the incident came from and was unable to describe him. He only recalled that the officer was in uniform and in a marked police car.

Officer Kwo was assigned to the conditions unit and the condition at that time was looting and burglary within the storm zones. Their focus was on making sure that people were who they said they were. They were paying special attention to people breaking into residences that had been vacated due to the storm and people who looked like they did not belong. Officer Kwo did not specify what factors he considered to determine whether someone looked like he or she did not belong.

The unidentified officer in the hurricane auto reported that he observed individuals coming out of what looked to be someone's backyard. The hurricane auto was not sure of the exact address but stated that it was in the vicinity of § 87(2)(b). Officer Kwo and Officer Hennessy were around the corner from the incident and responded. Upon arriving at the scene, they observed three individuals, who they later identified as § 87(2)(b) known to the investigation as § 87(2)(b) and § 87(2)(b) coming out of a backyard in the vicinity of § 87(2)(b). He observed bulges in their pants' pockets.

The yard was on the corner of the street. He believed the address to be § 87(2)(b). When he first observed them, they were walking out of the yard. Officer Kwo did not observe them standing in a yard for any length of time. Officer Kwo did not recall seeing a public alley in the vicinity. Officer Kwo recognized § 87(2)(b) from prior interaction. Officer Kwo and Officer Hennessy informed the hurricane auto that they would take it from there and he left the scene.

Officer Kwo and Officer Hennessy observed the individuals for a couple of seconds before approaching them. Officer Kwo and Officer Hennessy stopped § 87(2)(b) and § 87(2)(b) to identify who they were and what their business was in the backyard. His instinct was that they had no business being there. Officer Kwo and Officer Hennessy commanded the individuals to show them their hands and asked them if they had any weapons on them and what they were doing in the yard. § 87(2)(b) and § 87(2)(b) remained quiet. § 87(2)(b) was cursing continuously, saying, "Why the fuck are you stopping me? We didn't do anything." § 87(2)(b) did not answer the officers' questions. None of the individuals could give them valid reasons for what they were doing in the backyard. He could not recall what, if any, explanations they provided for being there. Officer Kwo did not recall if § 87(2)(b) asked to see his badge or other identification or if he asked for his name. He stated that if § 87(2)(b) had asked, he would have provided this information. Officer Kwo was in uniform and all of his information was displayed. He did not try to hide it. Officer Kwo did not hear § 87(2)(b) ask Officer Hennessy for his information.

Officer Kwo had been driving an unmarked car and had no "take down" lights to properly light up the scene. It was dark outside and the street lighting had not been fully restored. The street was dimly lit but there was not enough light for them to be confident that the individuals did not have anything in their hands or on them that would hurt the officers. Officer Kwo and Officer Hennessy told the individuals to keep their hands where they could see them. After seeing the bulges, the officers wanted to make sure that they had no weapons and secure the scene. Officer Kwo stated in his interview that, "You always have to make sure it's a cell phone, wallet, or what have you and that's it."

They placed § 87(2)(b) and § 87(2)(b) against the fence and frisked them. Officer Kwo frisked § 87(2)(b) first and then frisked § 87(2)(b). He frisked them where he saw the bulges, on their right side. He did not frisk them anywhere else. When he saw the bulges, he believed them to be some sort of weapon or blunt object. He did not suspect a specific kind of weapon and could not provide any dimensions for the bulges. He stated that the bulges were big and stuck out and he would not know what they were until he felt them. The bulges did not feel like weapons; they felt like wallets and cell phones. Officer Kwo did not enter their pockets. He

stated that they do a lot of stops with people who have cell phones and cell phone cases and things like that. § 87(2)(b) and § 87(2)(b) were very cooperative.

Officer Hennessy frisked § 87(2)(b). Officer Kwo did not recall if he observed bulges on § 87(2)(b) and did not observe the frisk because he was dealing with § 87(2)(b) and § 87(2)(b) at the time. § 87(2)(b) would not keep his hands on the wall. The officers explained to him that they needed to make sure that the scene was safe.

Officer Kwo obtained § 87(2)(b) and § 87(2)(b)'s identification and prepared summonses for them without incident. § 87(2)(b) started yelling for them to let him go and that they had no reason to stop them. § 87(2)(b) was not doing anything else other than screaming. As Officer Kwo was finishing the summonses for § 87(2)(b) and § 87(2)(b), § 87(2)(b)'s family arrived and attempted to talk to Officer Hennessy and Officer Kwo as they were performing their duties. Officer Kwo and Officer Hennessy asked them to give them a second to finish what they were doing. They explained that § 87(2)(b) and § 87(2)(b) were getting summonses and then they would be released. Officer Kwo issued § 87(2)(b) and § 87(2)(b) summonses and released them.

Officer Kwo did not identify § 87(2)(b)'s family members and only assumed that they were family by the way they were speaking to § 87(2)(b). A lady, identified through the investigation as § 87(2)(b), was the main one asking questions about the situation. Officer Kwo did not deem her to be disorderly. She only seemed concerned about § 87(2)(b). She was asking the officers questions while they were trying to question the individuals. § 87(2)(b) was less than 20 feet away but she did not get too close to the scene. An officer told § 87(2)(b) to get back in the house. Officer Kwo did not tell § 87(2)(b) to get in the house and did not hear an officer say, "Get the hell in the house," or, "Get the fuck in the house." Officer Kwo did not recall if he or any other officer used profanity during this incident.

§ 87(2)(b) stated that he did not have to stay there and walked away. The officers told § 87(2)(b) that he was not free to go at this point but if he gave them a second, he would be. § 87(2)(b) was being loud and disturbing the neighbors, who had begun to look out of their windows and turn on their lights to see what was going on.

§ 87(2)(b) was against the fence with his back to the officers. § 87(2)(b) tensed up with Officer Hennessy and tried to forcefully get away from the scene. He turned around with his hands balled up in a fist towards Officer Hennessy. Officer Hennessy grabbed § 87(2)(b) by his shoulders and his arms and forcefully turned him around. He placed his hand on § 87(2)(b)'s back and placed him back on the fence. § 87(2)(b) hit his head on the fence. The front of § 87(2)(b)'s body, from the waist up, made contact with the fence. No additional force was used against § 87(2)(b). § 87(2)(b) resisted having his arms placed behind his back for a brief second. Officer Hennessy placed him in handcuffs in less than 15 seconds. Officer Kwo did not observe any injuries on § 87(2)(b).

§ 87(2)(b) was placed in the vehicle and taken back to the 122nd Precinct stationhouse. Officer Kwo did not see Officer Hennessy get in § 87(2)(b)'s face and grab his collar bone with both hands. He did not hear Officer Hennessy say, "I'm going to get your brother to kick your ass."

At the stationhouse, they performed warrant checks for § 87(2)(b). § 87(2)(b) issued him a summons for § 87(2)(b) and released him. Officer Kwo did not recall if he noticed any injuries on § 87(2)(b) at the stationhouse and § 87(2)(b) did not complain of any injuries.

Officer Kwo did not recall if any other officers responded to the scene. Stop, Question, and Frisk reports were prepared for all three individuals. He did not remember if he or Officer Hennessy prepared them.

During Officer Kwo's second interview, he was shown photographs of the incident location from Google maps (encl. C1-C4). He noted that the photographs looked slightly different from

when he was there in January. Officer Kwo did not specify how the photographs differed from the way the area looked on the date of the incident. Officer Kwo stated that image #1 looked the most familiar, and that he remembered the house on the right side and possibly the fence. He could not say that it was the same exact fence that they frisked the individuals against but it was the same type of fence. He remembered the lights coming on at that house during the incident when § 87(2)(b) was getting agitated. Officer Kwo remembered the two-family home on the left in image #1. It was also to the left of them that night. The rest of the images looked changed since January and Officer Kwo could not identify them as the area where he had seen the individuals. He recalled, however, that he had seen the individuals emerge somewhere to the right of the fence seen in image #1.

Officer Kwo was also presented with photographs of the incident location taken in March (encl. C5-C14). He could not identify the area from which he had seen § 87(2)(b) and his friends emerge and could not identify their point of origin. Officer Kwo did not remember the number of the house that he saw § 87(2)(b) and his friends exit.

Subject Officer: OFFICER STEVEN HENNESSY

- *Officer Steven Hennessy is a white man who stands 5'8" tall and weighs 205 pounds. He has black hair and green eyes. At the time of the incident, he was § 87(2)(b) old.*
- *On January 14, 2013, Officer Hennessy worked in uniform from 1 p.m. until 9:35 p.m. with Officer Kwo. He was assigned to the conditions unit within the 122nd Precinct in marked vehicle #3549.*

Memo Book (encl. E13-14)

At 5:55 p.m., Officer Hennessy stopped § 87(2)(b) and § 87(2)(b) on the corner of § 87(2)(b) for § 87(2)(b) § 87(2)(b) became disorderly and refused to remain calm. At 6:22 p.m., § 87(2)(b) was arrested for § 87(2)(b) and Officer Hennessy reported back to his command. At 6:35 p.m., Officer Hennessy arrived with § 87(2)(b) At 7 p.m., § 87(2)(b) was released with a C-summons by Officer Kwo.

CCRB Interview

On June 18, 2013, Officer Hennessy was interviewed at the CCRB (encl. E15-17).

On January 14, 2013, at approximately 5:55 p.m., Officer Hennessy and his partner, Officer Kwo, received a radio call from the hurricane auto requesting a unit from the 122nd Precinct to respond to the corner of § 87(2)(b) in Staten Island. Officers in the hurricane auto stated that they had seen individuals in the backyard of a house. The officers from the hurricane auto unit are not from the 122nd Precinct or from the area. Officer Hennessy and Officer Kwo responded.

When Officer Hennessy and Officer Kwo arrived at the location, the officers in the hurricane auto were still at the scene. They were in their car and had not interacted with the individuals. Officer Hennessy saw three males, identified via investigation as § 87(2)(b) and § 87(2)(b) exiting the yard of a property on the corner of § 87(2)(b). He could not recall the exact address of the location. The men had been walking but were not doing anything else. Officer Hennessy told the officers in the hurricane auto that he and Officer Kwo would handle it and they left.

As soon as the men walked through the fence, Officer Hennessy and Officer Kwo told them to stay right there. The officers questioned them about why they were in the yard. § 87(2)(b) told the officers that there was a pathway there that they walk through all of the time and that their neighbors know that they go through the yard. § 87(2)(b) and § 87(2)(b) remained calm. § 87(2)(b)

§ 87(2)(b) was upset that they stopped him and explained that he lived two houses down. Officer Hennessy stated to the CCRB that there had been many burglaries in that area since Hurricane Sandy. Officer Kwo went to see if he could contact the homeowners or someone in charge of the property. After Hurricane Sandy, many of the residents had not yet returned to their homes, so Officer Kwo was never able to confirm with the neighbors that § 87(2)(b)'s story was true.

Someone from § 87(2)(b)'s household came home and alerted the whole house that § 87(2)(b) had been stopped by the officers. An individual came out of the house and identified himself as § 87(2)(b)'s brother. Another individual identified herself as § 87(2)(b)'s mother. Approximately 3 or 4 other people also came out of § 87(2)(b)'s home. § 87(2)(b)'s mother, identified through the investigation as § 87(2)(b) was worried that § 87(2)(b) was in trouble. Officer Hennessy explained to § 87(2)(b) that § 87(2)(b) was not in trouble and that he would come and talk to her but for now she had to stand back. § 87(2)(b) was emotional but once Officer Hennessy spoke to her, she calmed down. She was never told to get back into the house. Officer Hennessy did not say, "Get the hell in the house," or, "Get the fuck in the house."

§ 87(2)(b) became agitated that Officer Hennessy was talking to his mother. Officer Hennessy asked § 87(2)(b) to stay against the fence when he tried to walk away. Officer Hennessy told § 87(2)(b) that he was not free to leave at this point because they were trying to figure out what was going on.

During this time, § 87(2)(b) continued to put his hands into his pockets. Officer Hennessy would ask § 87(2)(b) to take his hands out of his pockets and he would comply and then place his hands back into his pockets after some time. Over the course of the stop, Officer Hennessy asked him to take his hands out of his pockets three separate times. During his interview, Officer Hennessy explained that he had not frisked him yet and did not know what he had in his pockets. Officer Hennessy told § 87(2)(b) that if he had to ask him again to take his hands out of his pockets, he was going to have to frisk him. Officer Hennessy later stated that he told § 87(2)(b) that he would place him in handcuffs if he had to ask him to take his hands out of his pockets again. After receiving this warning, § 87(2)(b) placed his hands back into his pockets.

Officer Hennessy frisked § 87(2)(b)'s pockets and his waistband. He did not recall if he felt anything in § 87(2)(b)'s pockets. Officer Hennessy stated that he frisked § 87(2)(b) because he continued to place his hands in his pockets and he did not know what § 87(2)(b) had on him. Officer Hennessy did not enter § 87(2)(b)'s pockets and did not frisk § 87(2)(b) or § 87(2)(b). § 87(2)(b) and § 87(2)(b) did get frisked but Officer Hennessy stated that he was not sure if he saw Officer Kwo conduct these frisks.

§ 87(2)(b) was being verbally discourteous stating that the officers had no right to stop him and that they should not be there. He told the officers that they had better things to do because there were people robbing houses and killing other people and they were there with him. At this point, § 87(2)(b) was not making any motions with his body. Officer Hennessy asked § 87(2)(b) to turn around and face the fence. Instead of turning around, § 87(2)(b) took a step forward and stuck his chest out towards Officer Hennessy. Officer Hennessy told him to turn around and, without incident, placed him in handcuffs. During this exchange, Officer Kwo ran over.

Officer Hennessy later stated that he told § 87(2)(b) to get back against the fence and he refused. Officer Hennessy grabbed § 87(2)(b) by his wrists, turned him around, and pushed him against the fence. § 87(2)(b) hit his head against the fence. § 87(2)(b) did not resist when Officer Hennessy grabbed him. Once Officer Hennessy had him against the fence, § 87(2)(b) did not physically resist. He did not give Officer Hennessy his hands but did allow Officer Hennessy to take his hands and handcuff him. § 87(2)(b) sustained a small scratch below his right eye. Officer Hennessy stated that the fence was a construction fence that was moving and not bracketed together. Officer Hennessy did not have to use any additional force against § 87(2)(b). Officer

Hennessy did not grab § 87(2)(b) by his collar bone. Officer Hennessy decided to place § 87(2)(b) in handcuffs for his safety after § 87(2)(b) took the step towards him.

Officer Hennessy asked § 87(2)(b) if he wanted medical attention and he told him to “go fuck [himself].” § 87(2)(b) was searched after he was handcuffed. § 87(2)(b) was taken to the stationhouse. He did not complain of pain at the stationhouse.

§ 87(2)(b) did not ask Officer Hennessy for any of his identifying information. The sergeant came after the incident was over to verify § 87(2)(b)'s arrest. The sergeant did not interact with § 87(2)(b) or § 87(2)(b). There were no other officers at the scene. Officer Hennessy had no previous interaction with § 87(2)(b) and did not know a person by the name of Frank Ehlers. Officer Hennessy did not say, “I’m gonna get your brother to kick your ass.” He did not recall if he used any profanity during the incident but stated that Officer Kwo probably did not. § 87(2)(b) witnessed the entire incident.

Officer Hennessy did not prepare a Stop, Question, and Frisk report for any of the individuals and did not know if Officer Kwo did. He stated that Officer Kwo wrote the summonses.

Officers Not Interviewed

The officer in the hurricane auto during the incident could not be identified and therefore, was not interviewed. The sergeant who appeared at the scene to verify the arrest arrived after the allegations were alleged to have occurred. § 87(2)(g)

Medical Records

§ 87(2)(b) was seen at § 87(2)(b) on § 87(2)(b). He did not have a critical airway issue and was awake and alert. He complained of an assault. The onset was sudden and the symptoms, which had been occurring for one day, have been resolved. The abrasion to the left side of his neck was the only sign of trauma to his neck. An abrasion and swelling to the left side of his forehead was also found during the exam. He had no loss of consciousness. There was no neuro deficit and no neck pain. He had a mild concussion and was to be observed until his parents arrived. He was discharged home with head injury precautions. He was instructed not to play sports until re-evaluated by his doctor. He was diagnosed with a closed head injury.

NYPD Documents

SPRINT Print-out/CD (encl. F1)

On January 14, 2013 at 5:58 p.m., three males were stopped at § 87(2)(b) by a conditions unit. The conditions unit had one under arrest at the location at 6:22 p.m.

Command Log (encl. F6)

On January 14, 2013, at 6:30 p.m., § 87(2)(b) was arrested for § 87(2)(b) at § 87(2)(b) by Officer Hennessy. He was released with summons #§ 87(2)(b). His physical appearance/mental condition was noted as normal.

Stop, Question, and Frisk Index (encl. F16-17)

There were no Stop, Question, and Frisk reports created for § 87(2)(b) or § 87(2)(b) on January 14, 2013.

Summonses for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- [§ 87(2)(b)] and [§ 87(2)(b)] have not filed a Notice of Claim with the City of New York as of October 11, 2013, more than five months past the 90-day filing deadline, with regard to the incident (encl. G1).

Civilians' Conviction History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilians' CCRB History

- This is the first CCRB complaint filed by [§ 87(2)(b)] [§ 87(2)(b)]

Subject Officers' CCRB History

- Officer Steven Hennessy has been a member of the service for three years and there are no substantiated CCRB allegations against him (encl. B1).
- Officer Emmanuel Kwo has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. B2).

Conclusion

Identification of Subject Officers

[§ 87(2)(b)] described three officers in his interview statement. He described one officer as a white or white Hispanic man between 5'4" and 6'2" tall in his late 20s-early 30s. The second officer he described as a 5'4" tall black man in his late 20s-early 30s with a medium build of 150 pounds and a black beard. The third officer he identified by name as Officer Hennessy and described as a white male, 5'5" tall with blond hair and a blond beard, in his late 20s-early 30s with a chubby build. Officer Kwo was the only black officer on scene and he and Officer Hennessy admitted being the only officers who interacted with [§ 87(2)(b)] and his friends. [§ 87(2)(b)] noted one white male and one black male as originally being on scene. [§ 87(2)(g)]

During his final telephone statement, [§ 87(2)(b)] clarified that Officer Hennessy refused to provide his name and/or shield number, frisked him, and used profanity against him. [§ 87(2)(g)]

Investigative Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(g)

Allegation A-Abuse: Officer Steven Hennessy stopped § 87(2)(b) and

§ 87(2)(b)

Allegation B-Abuse: Officer Emmanuel Kwo stopped § 87(2)(b) and

§ 87(2)(b)

It is undisputed that Officer Steven Hennessy and Officer Emmanuel Kwo stopped § 87(2)(b)

and § 87(2)(b)

§ 87(2)(b) alleged that he was walking through an alley with § 87(2)(b) when he encountered § 87(2)(b). A marked car appeared and two officers approached them and told them to get against the fence. § 87(2)(b) stated that he was walking through the alley with § 87(2)(b) and § 87(2)(b) when two officers jumped out of a marked car, ran towards them, and told them to put their hands against the wall.

Officer Kwo stated that he and Officer Hennessy received a call from an officer in the hurricane auto who told them that he saw individuals exiting what appeared to be someone's backyard. When they arrived, he observed them walking out of the backyard of § 87(2)(b) with bulges in their pockets. Officer Kwo and Officer Hennessy stopped them to identify who they were and what their business was in the backyard because they had been coming out of the yard with no business being there. Officer Kwo and Officer Hennessy observed them for a couple of seconds before approaching them. They commanded, "Let me see your hands. Do you have any weapons on you? What are you doing back there?" When § 87(2)(b) attempted to walk away, Officer Kwo told him that he was not free to leave.

Officer Hennessy stated that he and Officer Kwo received a radio call from the hurricane auto officer who saw individuals in the backyard of a house. As soon as the men walked through the fence, Officer Hennessy and Officer Kwo told them to stay right there. The officers questioned them about why they were in the yard. § 87(2)(b) told the officers that there was a pathway there that they walk through all of the time and that their neighbors know that they go through the yard. Officer Hennessy asked § 87(2)(b) to stay against the fence but he was trying to leave. Officer Hennessy told § 87(2)(b) that he was not free to leave at this point because they were trying to figure out what was going on.

Photographs of the incident location, taken immediately after § 87(2)(b)'s interview in March 2013, and images of the area obtained from GoogleMaps, show the area where § 87(2)(b) and § 87(2)(b) were walking prior to being stopped. The investigation determined that these photographs show that they were exiting an alleyway with a stone path. When presented with these photographs, Officer Kwo could not identify the area from which he saw § 87(2)(b) and § 87(2)(b) emerge. He stated that the area in the photographs looked different

than it had on the night of the incident, but he did not specify how it looked different, and he stated that two houses and a fence in the images were familiar.

An officer may stop and detain a person if he has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime. *People v. De Bour*, 40 N.Y.2d 210 (1976) (encl. A1-A11). Innocuous behavior alone, even in a high crime area, does not provide reasonable suspicion that a crime is at hand. *People v. Hampton*, 606 N.Y.S.2d (1st Dept. 1994) (encl. A25-A27).

§ 87(2)(g)

§ 87(2)(g)

Allegation C-Abuse: Officer Steven Hennessy did not provide his name and/or shield number to § 87(2)(b)

After being ordered to stand against the fence, § 87(2)(b) asked to see Officer Hennessy's official identification. Officer Hennessy told him that he was not showing him anything and again told § 87(2)(b) to get against the fence. § 87(2)(b) did not make this allegation in his phone statement.

Officer Hennessy stated that § 87(2)(b) did not ask for any of his identifying information. Officer Kwo did not hear § 87(2)(b) ask Officer Hennessy for his name and/or badge or any other information.

§ 87(2)(g)

Allegation D-Abuse: Officer Steven Hennessy frisked § 87(2)(b)

It is undisputed that Officer Hennessy frisked § 87(2)(b)

§ 87(2)(b) alleged that he and his friends had been walking through an alley way when the officers stopped them. Officer Hennessy patted his pants' pockets after placing him against the fence.

Officer Hennessy stated that he asked § 87(2)(b) to take his hands out of his pockets three separate times. § 87(2)(b) would comply and then place his hands back into his pockets after some time. He told § 87(2)(b) that if he had to ask him again to take his hands out of his pockets, he was going to have to frisk him. Officer Hennessy later stated that he told § 87(2)(b) that he would place him in handcuffs if he had to ask him to take his hands out of his pockets again. After receiving this warning, § 87(2)(b) placed his hands back into his pockets. Officer Hennessy frisked § 87(2)(b)'s pockets and his waistband. Officer Hennessy stated that he did this because § 87(2)(b) continued to place his hands in his pockets and he did not know what § 87(2)(b) had

on him. He did not recall if he felt anything in his pockets. Officer Kwo stated that Officer Hennessy frisked § 87(2)(b) but he did not observe the frisk because he was dealing with § 87(2)(b) and § 87(2)(b) at the time.

An officer may conduct a limited pat down search for a weapon if he reasonably suspects that he is in danger of physical injury. However, after any reasonable basis for the officer's fear for his safety has abated, he is not justified in continuing the search for contraband or evidence. People v. Rodriguez, 856 N.Y.S.2d 502; (2008) (encl. A12-16).

§ 87(2)(g)

§ 87(2)(g)

Allegation E- Discourtesy: Officer Steven Hennessy spoke rudely to § 87(2)(b) and

§ 87(2)(b)

§ 87(2)(b) alleged that Officer Hennessy asked § 87(2)(b) if he was being a “smart ass” and said, “I’m going to get your brother to kick your ass.” § 87(2)(b) did not allege that an officer used profanity during the incident. § 87(2)(b) alleged that Officer Hennessy said, “Get the hell in the house” or “Get the fuck in the house.” In her phone statement, § 87(2)(b) alleged that Officer Hennessy said, “Get in the fucking house before you get arrested.” When she stated that she wanted to know what was happening with her son, he repeated, “Get in the fucking house.” She did not allege any further discourtesy.

Officer Hennessy stated that he did not make those statements and did not recall if he used any profanity during the incident. Officer Kwo did not hear Officer Hennessy make those statements nor did he recall if any officer used profanity during the incident.

§ 87(2)(g)

Allegation F-Abuse: Officer Emmanuel Kwo frisked § 87(2)(b)

§ 87(2)(b) alleged that after he was frisked and placed in handcuffs, § 87(2)(b) was also frisked.

Officer Kwo stated that he observed § 87(2)(b) and § 87(2)(b) coming out of a backyard with bulges in their pockets. After seeing the bulges, he and Officer Hennessy wanted to make sure that they had no weapons on them. When Officer Kwo saw the bulges, he believed them to be some sort of weapon or blunt object. He did not suspect a specific kind of weapon and could not provide any dimensions for the bulges. He stated that the bulges were big and stuck out and he would not have known what they were until he felt them. Officer Kwo stated that, “You always have to make sure it’s a cell phone, wallet, or what have you.” Officer Kwo frisked § 87(2)(b) first and then frisked § 87(2)(b). He frisked them on their right side, where he saw the bulges. He did not frisk them anywhere else. The bulges did not feel like weapons; they felt like wallets and cell phones. Officer Kwo did not enter their pockets. Officer Kwo stated that § 87(2)(b) was very cooperative. Officer Kwo did not recall if he observed bulges on § 87(2)(b). Officer Hennessy stated that § 87(2)(b) was frisked but he was not sure if he saw Officer Kwo conduct the frisk.

A frisk may not be predicated merely upon the observation of an indefinable bulge. People v. Marine, 536 N.Y.S.2d 425 (1989 -1" Dept.)(encl. A17-19).

§ 87(2)(g)

§ 87(2)(g)

Allegation G-Force: Officer Steven Hennessy hit § 87(2)(b)'s head against a pole.

It is undisputed that § 87(2)(b) hit his head against the fence during his arrest.

§ 87(2)(b) alleged that he had not been moving or resisting when Officer Hennessy put one hand on the back of his head and slammed his head into the pole that was on the fence, causing the left side of his face to make contact with the pole. § 87(2)(b) corroborated his statement to medical personnel.

Officer Hennessy stated that he told § 87(2)(b) to turn around and without incident, placed him in handcuffs. He later stated that he told § 87(2)(b) to get back against the fence and he refused. He grabbed § 87(2)(b) by his wrists and turned him around. While holding him by his wrists, Officer Hennessy pushed § 87(2)(b) against the fence, causing him to hit his head against the fence. § 87(2)(b) did not resist when Officer Hennessy grabbed him. § 87(2)(b) sustained a small scratch below his right eye. Officer Kwo stated that after he told § 87(2)(b) that he was not free to leave, § 87(2)(b) tensed up with Officer Hennessy and tried to forcefully get away from the scene. He turned around with his hands balled up in a fist towards Officer Hennessy. Officer Hennessy grabbed § 87(2)(b) by his shoulders and his arms and forcefully turned him around. He placed his hand on § 87(2)(b)'s back and placed him back on the fence, causing § 87(2)(b) to hit his head on the fence.

§ 87(2)(b)'s medical records noted an abrasion and swelling to the left side of his forehead. He was diagnosed with a closed head injury and a mild concussion.

Patrol Guide procedure 203-11 states that only the amount of force necessary to overcome resistance will be used to effect an arrest (encl. A23-24).

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

Team: 5

Investigator: _____ Daniel Giansante _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date